

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MICHAEL POLLOK,

Plaintiff,

3:07-CV-637
(TJM)(DEP)

v.

DAVID P. DANIELS, Town Justice of Town
of Guilford, Chenango County, NY, *et al.*,

Defendants.

APPEARANCES:

MICHAEL POLLOK

Plaintiff, *pro se*

THOMAS J. MCAVOY, SENIOR JUDGE

DECISION and ORDER

I. Background.

The Clerk has sent to the Court an amended complaint filed by Michael Pollok ("plaintiff" or "Pollok") in accordance with this Court's June 20, 2007 Order. The June Order advised plaintiff that any claims asserted against Justice Daniels in his official capacity may not be permitted to proceed due to the doctrine of absolute judicial immunity. In addition, plaintiff was advised that state action is an essential element of any § 1983 claim, and that it his obligation to allege facts that would permit this Court to find state action on the part of the defendants named in a complaint, or face dismissal of those defendants. Accordingly, plaintiff was permitted an opportunity to file an amended complaint that fully set forth his claims.

II. Amended Complaint.

This Court is mindful of the standard for *pro se* pleading in this Circuit that directs

the Court to look at *pro se* pleadings "with a lenient eye, allowing borderline cases to proceed." *Fleming v. United States*, 146 F.3d 88, 90 (2d Cir.1998); *Phillips v. Girdich*, 408 F.3d 124 (2d Cir. 2005). However, a review of the amended complaint reveals that plaintiff failed to heed the direction given in the June order. Plaintiff once again names Town Justice Daniels in his complaint, and allegations of Daniel's use of his official position serve as the basis for plaintiff's claims. In addition, plaintiff once again named Hagan, Seidler and Hackett, even though they are not state actors and hold no official position. Accordingly, Daniels, Hagan, Seidler and Hackett must be dismissed from this action.

Plaintiff also seems to be asserting claims for false arrest and imprisonment, and improper seizure of property against the remaining defendants. In light of the standard dictated in *Phillips*, plaintiff will be permitted to proceed with these claims.

WHEREFORE, it is hereby

ORDERED, that defendants Daniels, Hagan, Seidler and Hackett be DISMISSED as defendants from this action, and it is further

ORDERED, that the Clerk shall issue summonses for the remaining defendants and forward them, along with a copy of the amended complaint (Docket No. 5) and General Order 25, to plaintiff for service of same on defendants in accordance with the Federal Rules of Civil Procedure, and it is further

ORDERED, that plaintiff shall promptly arrange for service of process on the defendants named herein in accordance with the Federal Rules of Civil Procedure, and it is further

ORDERED, that all pleadings, motions and other documents relating to this action shall be filed with the Clerk of the United States District Court, Northern District of New

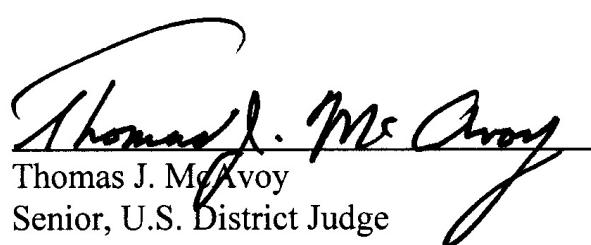
York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367.

Any paper sent by a party to the Court or the Clerk shall be accompanied by a certificate setting forth the date a true and correct copy of same was mailed to all opposing parties or their counsel. Any letter or other document received by the Clerk or the Court which does not include a certificate of service which clearly states that an identical copy of same was served upon all opposing parties or their attorneys is to be returned without processing. Plaintiff shall also comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. Motions must comply with Local Rule 7.1 of the Northern District of New York and are to be made returnable before the assigned Magistrate Judge on any business day with proper allowance for notice as required by the Rules. Plaintiff is also required to promptly notify the Clerk's Office of any change in his address; his failure to keep such office apprised of his current address will result in the dismissal of the instant action. All motions will be decided on submitted papers, without oral argument, unless otherwise ordered by this Court, and it is further

ORDERED, that the Clerk serve a copy of this Order on the plaintiff, the Chenango County Attorney, and the Office of the New York State Attorney General by regular mail.

IT IS SO ORDERED.

Dated:September 6, 2007



Thomas J. McAvoy
Senior, U.S. District Judge